

## REMARKS

According to the above amendments, claim 43 has been amended. Claims 46, 49 and 57-67 have been canceled. Claims 43-45, 47-48 and 50-56 remain in this application and are currently being examined. No claim has been allowed.

### Claim Rejections Under 35 USC § 112

Claims 43-48 and 50-56 remain rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection has several facets.

The Examiner has maintained the rejection of claim 43 based on the view that it continues to recite two contradicting limitations in step (ii) by claiming that the passenger peptide is expressed in the packaging cell and incorporated into the packaging cell membrane but, at the same time, is not considered as being derived from the packaging cell.

Accordingly, claim 43 has been amended to describe the nucleic acid encoding the passenger peptide as "exogenous" and the language has further been simplified to convey the incorporation of the passenger peptide into the packaging cell membrane and subsequently the budding virus particle.

The term "exogenous", while not specifically stated, is believed to have more than adequate support in the specification on an implicit basis. The specification clearly refers to

exogenous DNA throughout, but it is not described using the precise term "exogenous".

In view of the amendments to claim 43, applicant now believes that the claim is clear and no longer can be interpreted as reciting two contradictory limitations. Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection.

In addition, claims 43-48 and 50-56 remain rejected under 35 USC § 112, first paragraph, because it is deemed not enabling for a passenger peptide binding moiety other than mbSCF, or any target cell other than those expressing c-kit, or methods where the modified cell binding activity of the retroviral particle is determined by any non-Envelope-receptor interactions.

Applicant remains convinced that, with respect to the incorporation of membrane proteins into budding viral particles, it is well established, for example in Hammarstedt et al (2000), that the majority of proteins present on the cell surface become incorporated into retroviral particles.

Further, with respect to the Hammarstedt et al article, that article was cited to show that most membrane proteins are incorporated into budding viral particles, not that the binding affinity of such particles are modified by those membrane proteins. Thus, the article was not cited to support the claimed "modified cell binding activity" of the current invention as the Examiner appears to believe.

Applicant further believes that the limitations of the scope of the passenger peptide added to claim 43 renders the claim both predictable with respect to folding and incorporation of the passenger peptide and incorporation of the passenger peptide into the viral particle, having the affect of modifying the binding activity of the resultant viral particle.

#### **Claim Rejections Under 35 USC § 102**

The Examiner has maintained the previous rejection of claims 43-46 and 54-56 under 35 USC § 102(b) as being anticipated by Soong et al (2000). Applicant's previous arguments filed May 20, 2008 was deemed not persuasive. This rejection is respectfully traversed.

Applicant believes that, in view of the amendments to claim 43 addressing the clarity and enablement issues, also render the present claims novel, particularly in view of applicant's previous remarks differentiating Soong et al. In light of this, the Examiner is requested to reconsider and withdraw this rejection.

#### **Claim Rejections Under 35 USC § 103**

Claims 43, 48, 50 and 51 remain rejected under 35 USC § 103(a) as being unpatentable over Soong et al, above, and Dropulic et al (USPN 6,114,141). Applicant believes that this rejection also has been overcome based on the amendments to claim 43 addressing the issues under 35 USC § 112 and therefore, the

Examiner is also requested to reconsider and withdraw this rejection.

The additional rejections of certain claims under 35 USC § 103(a) based on additional combinations with Soong et al are also believed to have been overcome by these same amendments. It is now believed that the independent claim 43 and each of the other claims which depend in some way therefrom now include novelty and a definite inventive step over the cited references, taken either singularly or in combination.

Accordingly, in view of the above amendments, taken together with the explanatory remarks herein, the Examiner is respectfully requested to reconsider and withdraw the present rejections and allow the claims.

Should minor issues remain which, in the opinion of the Examiner, could be resolved by telephone interview, the Examiner is invited to contact the undersigned attorney at his convenience to discuss and resolve same.

Respectfully submitted,

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